

**REMARKS/ARGUMENTS**

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

The Abstract was objected to because of improper format. Applicants herewith submit a new Abstract.

Claim 2 has been amended to remove the self-dependency.

Claims 1-12 were provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1, 3, 6-9, 11, 15, 18-20 and 24 of co-pending application no. 10/196,130. Applicants have amended the independent claims to specify the contact time as ranging from a minimum of about 5 seconds to a maximum of about 2 minutes. The claims of Serial No. 10/196,130 are broader that they recite "about 3 minutes". The claims are therefore not identical.

Claims 1-30 were provisionally rejected for obviousness type double patenting over claims 1-28 of co-pending application S/N 10/196,130, claims 1-38 of co-pending application S/N 10/034,511, claims 1-23 of co-pending application S/N 10/096,812, claims 1-34 of co-pending application S/N 10/034,174 and claims 1-26 of co-pending application S/N 10/095,657. Applicants will upon indication of allowable subject matter provide a Terminal Disclaimer which is believed to obviate this rejection.

Claims 1-3, 5-11 and 14-30 were rejected under 35 U.S.C. § 103(a) as unpatentable over Casperson et al. (US Patent 5,376,146) in view of Lapidus et al. (US Patent 4,104,021). Applicants traverse this rejection.

The present invention is directed at the gradual permanent dyeing of hair in a manner to minimize hair damage. The same formula is utilized in each of the treatment cycles. Each cycle includes a rinsing of the mixture from the hair and is spaced about 8 hours to 30 days apart from a previous or later treatment. Furthermore, contact on the hair is limited to no longer than "about 2 minutes".

Applicants' gradual method achieves essentially the same color result after a series of two minute treatments than the traditional single cycle with substantially longer contact times. Treatment to the hair according to the present invention imparts a lower wet combing force, higher break stress, low amounts of cysteic acid (indicating less hair damage), good hair color change, less color fading, and more intense color.

Casperson et al. was introduced as teaching a method for dyeing hair. The Examiner recognized that the reference fails to disclose several important features of the claims. These include absence of disclosure with respect to the time interval of 8 hours to 30 days between treatments and the contact period between 5 seconds and 2 minutes.

Lapidus was introduced as teaching a process for dyeing hair comprising applying a mixture of a colorant oxidative solution in successive applications for a time period of "up to 5 minutes" and use repeated once every 2 to 8 weeks.

A close reading of Lapidus will reveal that the shortest disclosed contact time is 5 minutes. See column 3, (lines 8, 52 and 67) and column 4 (lines 54 and 59). By contrast, applicants claim a much shorter contact time of about 2 minutes maximum. This brief contact, preferably through an ordinary shampoo treatment insures minimization of damage.

Lapidus does not use an identical colorant mixture for successive treatments. He gradually increases the amount of oxidant solution in a series of treatments. See column 3, (lines 40-47). The reference method is illustrated under Example 1. Therein the first treatment utilizes 2.5 cc oxidant solution. This is followed in the next cycle by an 5 cc oxidant solution. Finally a 10 cc oxidant solution is applied. See column 4 (lines 45-59). By contrast, applicants in each treatment cycle apply the same formula colorant mixture. There is no step-up increase of oxidant from one treatment cycle to another.

A combination of Casperson et al. in view of Lapidus et al. would not render this invention obvious. Casperson does not teach the slow gradual treatment of hair through a number of cycles which impart ever increasing color intensity to the hair. While Lapidus is concerned with gradual coloration, the method is quite distinct from the presently claimed invention. Lapidus employs a contact cycle of at least 5 minutes minimum, while the present claims are no longer than about 2 minutes. Further, Lapidus teaches that each treatment cycle must increase the level of oxidant. By contrast, applicants operate with the same colorant mixture within each of the treatment cycles. The Examiner has not set forth a prima facie case. The references lack the method steps of 2 minute maximum contact time and utilizing the same composition (and concentrations) for consecutive treatment cycles. Accordingly, the combination of Casperson et al. in view of Lapidus et al. would not render the instant invention obvious.

Claim 4 was rejected under 35 U.S.C. § 103(a) as unpatentable over Casperson et al. (US Patent 5,376,146) in view of Lapidus et al. (US Patent 4,104,021) and further in view of Duffer et al. (US Patent Application 2001/0002254 A1). Applicants traverse this rejection.

Duffer does not remedy the basic deficiencies of the primary and secondary references. There is no disclosure in any of these documents that not only should there be successive treatments but each should be held to a maximum of 2 minutes contact time. Lapidus et al. is the only reference that teaches stepwise color treatment yet this document leads away from the present invention. Therein is required that ever increasing levels of oxidant be employed till a steady state of color is reached. By contrast, applicants' invention utilizes the same concentration for each successive treatment. Based on these considerations, the combination of cited art would not render the instant invention obvious.

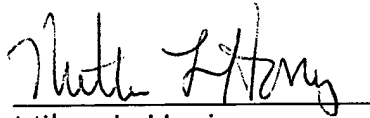
Claims 12-13 were rejected under 35 U.S.C. § 103(a) as unpatentable over Casperson et al. (US Patent 5,376,146) in view of Yasuda et al. (EP 0 823 250 A2) and further in view of Duffer et al. (US Patent Application 2001/0002254 A1). Applicants traverse this rejection.

Claims 12-13 have been canceled. It would appear that this objection is now moot.

J6691/1(C)  
Y2-0530-A-HC

In view of the foregoing amendment, Terminal Disclaimer and comments, applicants consider the claims are now in condition for allowance and such action is herewith requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Milton L. Honig", written over a horizontal line.

Milton L. Honig  
Registration No. 28,617  
Attorney for Applicant(s)

MLH/sm  
(201) 840-2403